

Records Management Help

For the last several years, the Information Policy Analysis Division (IPAD) has provided some level of help to state agencies and political subdivisions with records management issues. We have answered questions, distributed general retention schedules and processed records management forms, among other things.

When state agency budget cutting began about two years ago, the Ventura Administration decided that IPAD's budget would be cut \$70,000 and that the cut would be directed at eliminating the position of state records manager and associated costs. The cut became effective in FY03 (July 2002) and was a permanent cut to the funding for IPAD. In October

2002, former Commissioner David Fisher announced to state agencies and others that the Department of Administration would no longer be providing records management services.

In anticipation of going out of the records management business, IPAD sought alternatives so that some level of assistance and information could be provided to government entities working to comply with the Records Management Act. IPAD contacted various major governmental associations and arranged with them to respond to questions, and to

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A Note From the Editor

In publishing this newsletter, we strive to provide helpful and meaningful information to assist government entities in complying with the Data Practices Act and related laws and to inform citizens of their rights. We are reasonably sure that some of the items we publish advance that objective.

However, as this publication is about helping you, our readers, we really do encourage feedback from you. If you disagree with the content of this publication, feel free to sound off and offer another viewpoint. If you would like to see some changes in the format or content of features like the Opinion Summary or the Swamp Fox, let us know. If there is some topic or issue that you would like featured, please tell us about it. If you know of training opportunities that are coming up in the future that you would like publicized,

please share. If you have developed compliance and/or training materials that you are willing to share, send us the information. If you are involved in a case you want others to know about, let us know. Lastly, we are always looking for volunteers to write a guest column on information law related issues. Please feel free to volunteer.

You can contact us a number of ways. Our phone number is 651-296-6733. Our toll free number is 800-657-3721. Our fax number is 651-205-4219. Our physical address is Room 201, Administration Building, 50 Sherburne Avenue, St. Paul, MN, 55155. Our email address is info.ipad@state.mn.us. Our website is at www.ipad.state.mn.us. We look forward to hearing from you.

Don Gemberling
Editor



Information Policy
Analysis Division

Minnesota
Department of
Administration

Opinion Highlights

These are highlights of recent Commissioner of Administration advisory opinions. All opinions are available on the IPAD website at www.ipad.state.mn.us.

03-037: An individual asked the City of Brainerd to explain the meaning of certain words contained in documents in which the individual was a subject. The Commissioner opined that the City was required to explain the meaning of certain common words because, in this instance, given the context, the individual could not reasonably have been expected to understand the meaning. (See Minnesota Statutes, section 13.04, subdivision 3.)

03-040: The Minnesota Department of Public Safety asked the Commissioner about the classification of data in the Bureau of Criminal Apprehension's Minnesota Repository of Arrest Photos (MRAP). The Commissioner opined that the data in MRAP are private because they appear to be criminal history data as that term is defined in Minnesota Statutes, section 13.87, subdivision 1(a).

03-041: The *Saint Paul Pioneer Press* was denied access to booking data previously accessible from the

state Department of Corrections as part of the Detention Information System. The data are now part of the Statewide Supervision System. The Commissioner opined that pursuant to Minnesota Statutes, section 13.03, subdivision 4(c), booking and detention data contained in the Statewide Supervision System are public.

03-042: *The Daily Journal* of International Falls asked the Koochiching County Sheriff's Office for certain information relating to an incident. The Sheriff's Office declined to provide the name of the alleged victim, who is a juvenile. The Commissioner opined that the name properly was withheld because the County was considering charging the juvenile with criminal acts at the time of the request. (See Minnesota Statutes, section 260B.161.) However, the Commissioner noted that the County was obligated, at the time of the request, to provide the statutory basis for denying access to the juvenile's identity. (See Minnesota Statutes, section 13.03, subdivision 3(f).)

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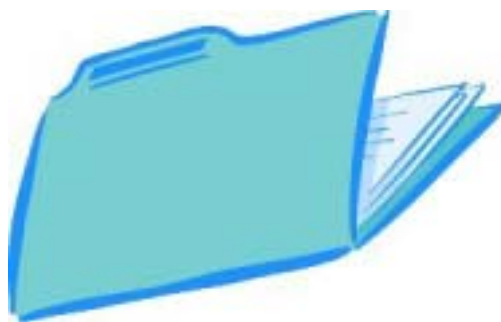
Case Update

The petition for review of the Court of Appeals' decision in *Star Tribune Company v. University of Minnesota*, 667 N.W. 2d 447 (Minn. Ct. App. 2003) was granted October 21, 2003. This case is about the process used to select the president of the University. The primary issues are whether the University is subject to the Data Practices Act and the Open Meeting Law. The matter is not yet scheduled for argument before the Supreme Court.

WDSI, Inc. v. County of Steele, (A03-680 filed December 30, 2003) interprets Minnesota Statutes, section 13.05, subdivision 11, the provision making the Minnesota Government Data Practices Act (MGDPA) applicable to private parties that perform government functions under contract. Steele County hired an architectural firm to build a new county jail. The architects established prequalification bid requirements. When WDSI asked Steele

County for data about the process used to establish the prequalification bid requirements, it was referred to the architects. When the architects were asked to provide the data, they refused. The contract between Steele County and the architects did not contain the language required by Minnesota Statutes, section 13.05, subdivision 11.

The district court had refused to infer the statutory language into the contract and had entered an order requiring Steele County to get the data from the architects. The Court of Appeals disagreed with the trial judge and found that the statutory language was implied in the contract. The Court of Appeals also held that if the private party performing a governmental function does not comply with the MGDPA, then the remedy is against the private party. Because Steele County does not have the data WDSI requested, WDSI was directed to proceed against the architects.



Advice from the Swamp Fox*

**Francis Marion, "the Swamp Fox," was a colonial officer from South Carolina in the Revolutionary War renowned for hiding in swamps while carrying out guerilla warfare against the British.*

Dear Swamp Fox:

I am the responsible authority for the City of Friendly and we have had numerous requests recently for public data from our city water utility. These requests are coming from a vacuum cleaner salesman, the cable television franchise and the Welcome Wagon, to name a few. We've also had requests for all the email addresses for city employees. We haven't responded to any of the requests because we don't think the ultimate use of the data (either to sell things or to spam our employee email addresses) is a proper use of government data. Are we on solid ground if we deny these requests for public data?

Signed: The Friendly Responsible Authority

Dear Responsible Authority:

Thanks for writing before you actually entered the swamp that you are heading towards! The Minnesota Legislature has said, in essence, that public data are available to anyone for any reason. In other words, it doesn't matter what use a requester ultimately will make of the public data. If government data are public, the data must be provided to a requester.

I came to that conclusion by using the definitions of "public data on individuals" and "public data not on individuals" (see Minnesota Statutes, section 13.02, subdivisions 15 and 14) and looking at Minnesota Statutes, section 13.03. That section requires that you provide access to public data, regardless of how the data might be used.

Some citizens do not like this outcome and may call City Hall asking what they can do to prevent the release of their data in the future. The short answer to that question is "nothing." The long answer is that the Legislature has decided, on behalf of all citizens, that certain data collected, received and maintained by the government will be accessible to anyone who asks for it. The Legislature has not provided an "opt out" process that would allow citizens to keep their data from being shared. Therefore, you, as a City official, cannot offer unhappy citizens any direct relief. You certainly can suggest they contact their legislators if they feel strongly about these issues.

In an effort to reduce the number of unhappy citizens whose data are released to requesters, you could consider giving citizens notice that the data they are about to provide are public and will be produced on request. This is not required, but may be helpful for good citizen relations. This gives you, as a City official, the opportunity to remind the citizen of this notice when they call to complain.

The Swamp Fox

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03-043: The Minnesota Department of Transportation asked the Commissioner about the classification of certain data maintained by the Uniform Hazardous Material and Hazardous Waste Registration and Permit Requirements Program. The Commissioner opined that the data in question meet the definition of "security information" as that term is defined in Minnesota Statutes, section 13.37, subdivision 1(a).

03-045: An individual asked the Bloomington School District for access to public data concerning the disciplinary action taken against an employee. The District responded by acknowledging that a complaint existed and that "appropriate action" had been taken. The Commissioner opined that, pursuant to Minnesota Statutes, section 13.43, subdivision 2, the District

should have informed the requestor that no disciplinary action had been taken.

03-046: The Mahtomedi School District asked the Commissioner whether it was required to respond to multiple data requests from an individual. The Commissioner did not find that the number and type of requests rose to a level such that the individual was using Minnesota Statutes, Chapter 13, as a tool to harass the District.



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The Data Practices Committee Wants You!



Would hearing how other data practices practitioners handled the issue you are facing be of help to you? Would you benefit from a monthly forum where others who work with data practices issues discuss legislation, cases, and advisory opinions from the Commissioner of Administration?

If you answered either one of these questions “yes” and you are in the greater metropolitan area, then the Data Practices Committee of the Public Law Section of the Minnesota State Bar Association is for you. Current membership includes representatives of a school district, a county attorney’s of-

fice, several state agencies and the Office of the Attorney General. Members would appreciate the participation of more schools and cities.

The Data Practices Committee meets on the first Monday of the month at 3:00 p.m. at the Health Department’s conference center near the State Fairgrounds. Parking is free and the meetings last until 4:30 p.m. Directions are available at www.health.state.mn.us/about/direct.html#sop. If you have questions, contact Katie Engler at 651-284-3919 or katie.engler@state.mn.us. The next meeting is Monday, February 2 – please join us!

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provide retention schedules and copies of “Preserving and Disposing of Government Records” (the basic guide to records management). The League of Minnesota Cities, the Minnesota Association of Townships and the Association of Minnesota Counties took on this responsibility for their members. The staff of the Archives Department of the Minnesota Historical Society, who have always provided substantial and professional assistance for records management matters, will answer some records management questions and

continue to process the various forms required by the records management statute. The Historical Society has developed a new form for submitting records retention schedules. The form is available at www.mnhs.org/preserve/records/BlankRetForm.rtf. Calls to IPAD for records management assistance will be referred as noted below.

Although we are unable to ask for funding for a state records management program, IPAD continues to actively raise questions with Department of Administration management and others about how best to advance the objective of the Records Management Act. Although we are not sure what response may be forthcoming as we raise these issues with policymakers, we will report any progress or developments to you.

Records management assistance is available as follows: Cities may call the Research Service at the League of Minnesota Cities, 651-281-1200; Counties may call the Association of Minnesota Counties at 651-224-3344; Townships may call the Minnesota Association of Townships at 763-497-2330. Each Association has available pertinent general retention schedules, as well as copies of “Preserving and Disposing of Government Records.” School districts should contact their records manager or attorney. General schedules for schools are available from IPAD for a fee, or online at www.region1.K12.mn.us. State agencies should contact their own records manager. IPAD has copies of the state agency general schedule available; however, it is quite dated.

Assistance also may be obtained from a group of state and local government records managers who have banded together as MNGRIN. This group meets monthly in St. Paul and also maintains a listserv. See www.mnhs.org/preserve/records/mngrin.html for more information.



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Questions or comments?

Contact the Information Policy Analysis Division at 201 Administration Building, 50 Sherburne Avenue, St. Paul, MN, 55155; phone 800.657.3721 or 651.296.6733; fax 651.205.4219; email info.ipad@state.mn.us.

Staff: Don Gemberling, *Director*, Katie Engler, Janet Hey, Brooke Manley, Linda Miller and Catherine Scott.

This document can be made available in alternative formats, such as large print, Braille or audiotape by calling 651.296.6733.

For TTY communication, contact the Minnesota Relay Service at 800.627.3529 and ask them to place a call to 651.296.6733.

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